

**ASSEMBLY BILL**

**No. 1351**

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**Introduced by Assembly Member Vargas**

February 22, 2005

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An act to amend Section 11340.5 of the Government Code, relating to state agencies, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 1351, as introduced, Vargas. Office of Administrative Law: regulations.

Existing law prohibits a state agency from issuing, utilizing, enforcing, or attempting to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, unless it has been adopted as a regulation and filed with the Secretary of State. Under existing law, if the Office of Administrative Law is notified, or learns on its own, that an agency guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule has not been adopted as a regulation and filed with the Secretary of State, the office may issue a determination as to whether it is a regulation.

This bill would require the office in making its evaluation to give priority to matters affecting a large number of people and having a significant fiscal implication for the state.

This bill would appropriate \$234,000 to the Office of Administrative Law from the General Fund for these purposes.

Vote:  $\frac{2}{3}$ . Appropriation: yes. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. Section 11340.5 of the Government Code is amended to read:

11340.5. (a) No state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, ~~which~~ *that* is a regulation as defined in Section 11342.600, unless the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule has been adopted as a regulation and filed with the Secretary of State pursuant to this chapter.

(b) If the office is notified of, or on its own, learns of the issuance, enforcement of, or use of, an agency guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule that has not been adopted as a regulation and filed with the Secretary of State pursuant to this chapter, the office may issue a determination as to whether the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, is a regulation as defined in Section 11342.600.

~~(c) The~~ *In evaluating whether to issue a determination pursuant to this section, the office shall give priority to the following:*

*(1) Matters affecting a large number of people.*

*(2) Matters with significant fiscal implications for the state.*

*(d) If the office elects to issue a determination pursuant to this section, it shall do all of the following:*

*(1) File its determination upon issuance with the Secretary of State.*

*(2) Make its determination known to the agency, the Governor, and the Legislature.*

*(3) Publish its determination in the California Regulatory Notice Register within 15 days of the date of issuance.*

*(4) Make its determination available to the public and the courts.*

~~(d)~~

*(e) Any interested person may obtain judicial review of a given determination by filing a written petition requesting that the determination of the office be modified or set aside. A*

1 petition shall be filed with the court within 30 days of the date  
2 the determination is published.

3 ~~(e)~~

4 (f) A determination issued by the office pursuant to this  
5 section shall not be considered by a court, or by an administrative  
6 agency in an adjudicatory proceeding if all of the following  
7 occurs:

8 (1) The court or administrative agency proceeding involves the  
9 party that sought the determination from the office.

10 (2) The proceeding began prior to the party's request for the  
11 office's determination.

12 (3) At issue in the proceeding is the question of whether the  
13 guideline, criterion, bulletin, manual, instruction, order, standard  
14 of general application, or other rule that is the legal basis for the  
15 adjudicatory action is a regulation as defined in Section  
16 11342.600.

17 SEC. 2. The sum of two hundred thirty-four thousand dollars  
18 (\$234,000) is hereby appropriated from the General Fund to the  
19 Office of Administrative Law for the purposes of this act.

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